

# **TEXAS JUVENILE PROBATION COMMISSION BOARD MEETING**

**November 21, 2008  
Brown Heatly Building  
Austin, Texas**

## **COMMISSIONERS PRESENT**

Ray West, Chair  
Jean Boyd  
Ed Culver  
Billy Wayne McClendon  
Scott O'Grady  
Rene Ordoñez  
Cheryl Lee Shannon  
Bob Shults

## **COMMISSIONERS ABSENT**

Lea Wright

## **TJPC MANAGEMENT STAFF PRESENT**

Vicki Spriggs, Executive Director  
Lisa Capers, Deputy Executive Director  
Kristy Almager, Staff Services Coordinator  
Denise Askea, Director Federal Programs  
Linda Brooke, Director Education Services and Intergovernmental Relations  
Annie Collier, Director Fiscal Services  
Scott Friedman, Director Field Services  
Debbie Garza, Chief of Staff  
Steve Spencer, Director Behavioral Health  
Cindy Weisinger, Director Training

## **TJPC STAFF PRESENT**

Ana Aguirre	Doug Halstead
Paul Anderson	Lesly Jacobs
Kati Branch	Conrad Jones
Nadine Butler	Rachael Kapur
Charlotte Caples	Diane Laffoon
Craig Corder	Aaron Mills
Chris Cowan	Katrena Plummer
Erin Espinosa	John Posey
Pam Gereau	Genovia Spencer
Eric Gonzalez	Anthony Welebob
Luis Guerrero	Kim Wood

**1. Call to Order – R. West**

Commissioner Ray West called the board meeting of the Texas Juvenile Probation Commission to order at 9:07 a.m.

**2. Excuse Absences – R. West**

A **motion** was made by Commissioner Boyd and **seconded** by Commissioner Culver to excuse the absence of Commissioner Wright. Motion passed unanimously.

**3. Approval of Minutes from September 19, 2008 Board Meeting – R. West**

A **motion** was made by Commissioner Ordoñez and **seconded** by Commissioner Shults to approve the minutes as presented. Motion passed unanimously.

**4. Discussion and Possible Approval of the Annual Internal Audit Report for Fiscal Year 2008 – R. Gonzalez**

*Note: Item #22 was taken out of order and presented at this time.*

A draft of this report was submitted to the State Auditor's Office, Governor's Office, Sunset Commission and the Legislative Budget Board (LBB) with the understanding that it would be presented for approval today. Twelve recommendations from 2007 are included in this report along with the Standards Compliance Unit Internal Audit Report and the Audit Plan that was approved in 2008. Management is in different stages of implementing all recommendations.

The proposed areas recommended for fiscal year 2009 include the abuse and neglect investigations unit, community corrections funding, follow-up of prior year audits and other tasks as may be assigned by the board or management during the fiscal year. A risk assessment may be brought forth at the next board meeting. An external quality review will also be conducted in 2009.

A **motion** was made by Commissioner Shannon and **seconded** by Commissioner Ordoñez to approve the Internal Audit Report for Fiscal Year 2008. Motion passed unanimously.

**5. Update on Fiscal Year 2009 Budget and Expenditures – A. Collier**

The categories under Grants and Contracts that are below 16.6% expended are reimbursement funds. Upon approval, two months of payments are disbursed to the departments and then they receive payments monthly. Community corrections grants are the same way.

The Juvenile Justice Alternative Education Program (JJAEP) Statutory amount is a reimbursable category and thus shows 0% has been expended. The JJAEP grant is disbursed twice per year, first at the beginning of the fiscal year and the remaining amount in February. The MacArthur Foundation Grant for fiscal year 2009 is \$255,661.

The rest of the expenditures are within budget and funds have been expended accordingly.

Pam Gereau was introduced to report on a meeting with the staff of the federal agency Administration of Children and Families (ACF) and the Texas Department of Families and Protective Services (DFPS) in Dallas. The Commission has only received about \$11 million in Title IV-E Foster Care funds. That amount only includes the first quarter reimbursements.

In September 2007 ACF placed all claims on hold from the second quarter until changes could be made to the program that were consistent with ACF's current interpretations. This amounted to about \$18-\$20 million worth of claims.

Changes were made and submitted to ACF and it was requested that ACF allow claims for 2<sup>nd</sup> and 3<sup>rd</sup> quarters using the new methodologies. That request was rejected. Subsequently, the counties submitted letters to their legislators who contacted ACF and things have started moving.

DFPS came up with some options on how the Commission can claim the 2<sup>nd</sup> and 3<sup>rd</sup> quarter, one of which was that those claims could be submitted using our old methodology. The claims would probably be denied, and then the Commission would appeal based on the fact that ACF was out of their purview and scope in placing the claims on hold in the first place. The Commission went with that and counties have been submitting all of their claims for 2<sup>nd</sup> and 3<sup>rd</sup> quarter.

Commission staff attended a round table meeting last week and ACF was there. They held a conference call with their regional office in Dallas on Friday of last week with the Washington folks and they said they're trying to work something out with the 2<sup>nd</sup> and 3<sup>rd</sup> quarter claims. It is unknown what that means at this point.

The plan is to submit the 4<sup>th</sup> quarter claims using the new methodology which will drastically reduce what the counties are receiving. It will probably be at most 50% of what they previously got. ACF has not yet formally approved the Commission's new plan.

No action was required for this item.

#### **6. Overview of Standards Review Process – L. Capers**

The Commission's mandate is to adopt reasonable rules that provide minimum standards for pre and post secure facilities. The Commission's goals are to make sure the kids are safe in the facilities under its jurisdiction and to minimize liability for the board, the agency and for the counties. The Commission also has the mandate to monitor those standards for compliance and to inspect the facilities annually.

If counties rely on an inadequate standard and think they're protected, and then they get into litigation and find out that standard really isn't the best practice, or even the national norm for treatment, then the Commission really hasn't done the county any favors.

Within the last few months the Commission has been contacted by different national advocacy groups. One in particular is Stop Prisoner Rape which is now called Just Detention International. They are an organization out of California and D.C. and want to help with technical assistance.

Civil Rights of Institutionalized Persons Act (CRIPA) is a law that tries to help eliminate unlawful commissions of confinement. They look at physical abuse, safety issues, neglect, medical and mental health care and any educational inadequacies. The Department of Justice (DOJ) is given the authority under federal law to bring actions under CRIPA for violations. 25% of the CRIPA investigations to date have been in juvenile facilities.

The Prison Rape Elimination Act (PREA) regulations which are pretty extensive could become effective within the next year and we'll all be dealing with that as well.

No action was required for this item.

#### **7. Review and Possible Approval of Chapter 343 Related to Secure Juvenile Pre-Adjudication Detention and Post-Adjudication Correctional Facilities for Initial Publication in the Texas Register – S. Friedman**

*Note: Commissioner Culver was excused to leave during this item.*

If the standards are published today in the Texas Register and there are public comments and revisions, the Commission will ask for a second publication. The outcome of the two anticipated public comment periods will dictate a third. If there is a third, the effective date of September 1, 2009 would be difficult for both the staff and the field to prepare for and transition into the new standards.

This chapter will impact both pre-adjudication and post-adjudication facilities. Right now, this would affect 83 facilities, of which there are 51 juvenile detention centers and 32 secure post-adjudication programs affecting 52 counties. This is the lengthiest chapter of standards. The following are thought to be the most significant changes.

**Subchapter A. DEFINITIONS AND APPLICABILITY:**

**§343.100(2) Behavioral Health Assessment**

In current standards a post-adjudication kid going into placement requires a psychological evaluation. The term 'psychological' stays, a second evaluation process has been added that does not require a psychologist, it just requires a licensed mental health professional to administer it and it is called a 'behavioral health assessment'. That will have significance in a couple other standards.

**§343.100(38) Positive Screening**

Right now the statutory requirement is that the departments use a mental health screening instrument. The instrument of choice in this state is the Massachusetts Youth Screening Instrument (MAYSI). If a child scores in a high, warning or cautionary area that test, that translates into a positive screening meaning that the instrument is telling you to get further assessment.

**§343.100(49) Secondary Screening**

This is a triage process that is brief and designed to clarify if a resident is in need of intervention or a more comprehensive assessment and what type of intervention or assessment is needed.

**Subchapter B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS**

**§343.208(2)**

A zero tolerance policy and practice regarding sexual abuse in accordance with the Prison Rape Elimination Act of 2003 that provides for administrative and/or criminal disciplinary sanctions.

**§343.212(h)**

The facility administrator's periodic reporting of statistical information specifically focusing on abuse and neglect, serious incidents, etc.

**§343.260. Resident Searches.**

The Commission looked at ACA and a Casey document named Juvenile Detention Alternatives Initiative Guidelines and what is specific to pat down searches and strip searches where there is some state of undress or physical contact with the child. There's a class action suit right now in California having to do with strip searches and there has been some inquiry about Texas' practices from those litigants.

Some of the national best practices require that if there's any type of contact with a strip search there be two persons so that someone can vouch for any kind of conduct or rebut any kind of allegation easier.

**§343.274 - §343.284**

This is a string of standards all speaking to resident discipline and due process trappings that ensue after there's been a discipline evaluation. These new standards bring it into some minimal level of national best practice, in compliance with standards of other bodies and constitutional provisions.

This is a significant standard and in the past six months it has been the number one topic in discussions with the field. A related component of disciplinary seclusion is when a child is removed from general population and locked up during program hours. It is also a due process, something that was missing in the Commission's standards.

If a kid is having a behavior emergency or is out of control physically then there's no due process requirement. The Commission requires after a kid goes into seclusion at different increments in time there's due process requirements. The child who is secluded will not need to have a formal disciplinary hearing or review until the 72<sup>nd</sup> hour of isolation. An administrative review is a 24-hour stop gap measure, and it doesn't have to be a formal proceeding like a typical hearing.

The final one in Subchapter B is §343.376 – §343.382. That is similar due process systems with safeguards put in place for resident grievances. This was also a big discussion point with the field.

### **Subchapter C. SECURE PRE-ADJUDICATION DETENTION FACILITY STANDARDS**

#### **§343.404 Mental Health Screening and Referral**

This has significant implications for jurisdictions without mental health staff on payroll or without community services that they can draw upon. In the Commission's proposed LAR is an exceptional item for \$5 million over the biennium that would allow the hiring of mental health professionals in every single registered secure post and pre-adjudication facility. That would help greatly in facilitating this standard.

#### **§343.406(c) Mandatory Health Assessment**

Right now standards require an intake screening where a child is administered a screening that can be by a non-medical professional, and that intake screening is simple observations and questions and answers from the resident. If there's any highlights the kid can get referred to a medical professional to look further at any complications or medical history. That is compliant with national best practices. The Commission does that upfront within the first couple of hours of intake or admission.

The Commission standard just requires the MAYSI screening. National best practice puts a medical health professional with that kid within 7-10 days regardless of what the screening instrument did or did not reveal. The Commission standard is at 30 days so it is slowly getting to the national best practice, but is not yet there.

A misconception of cost impact with this standard originally was that health assessments had to be conducted by a physician but it does not. It can be any one of the medical health professionals listed in the Commission definition, and might not be a physician.

#### **§343.428 Resident Supervision**

The requirement now for a detention officer will remain in the new standards for a juvenile supervision officer (JSO). A JSO must have completed their initial 40 hours of training for mandatory topics and taken a competency test prior to being certified.

#### **§343.444(c)(d)(e)(f)**

Right now standards do not speak to when a resident leaves the facility, and there were some concerns about that. There is no ratio requirement since that would have fiscal and human resources implications but it must be addressed internally in formal policies and procedures. If this standard is adopted the facilities would be monitored to see how they comply with their own internal policies.

### **Subchapter E. RESTRAINTS**

#### **§343.800(11) Non-Ambulatory Mechanical Restraint**

This is the creation of a new category or definition "non-ambulatory restraint". The non-ambulatory restraint in current standards is a four-point where they're secured face up to a bed and with restraints. The restraints that are currently in practice can be handcuffs or soft restraints, it's just giving them a name and provision and definitions.

The other type of non-ambulatory restraint that's permitted is a restraint chair. It's a professionally manufactured device where a person can be moved to different parts of a facility instead of being on a secure bed. It would be used on an assaultive youth or one who is exhibiting extreme self harm.

In existing standards there's a long litany of things you have to do in order to use restraint chairs such as checks, circulatory checks, resident observations, medical clearance, facility administrator approval for authority and all types of hoops the department has to go through. What were conditions to use the restraint chair now has been overlaid onto the traditional four-point restraint.

The chapter is large and there are other significant issues, but due to the time and to allow for questions and hear public comment that will be all the highlights for this chapter.

As it relates to the formal disciplinary review process, Commissioner Ordonez has a concern with perception of impartiality during the review process, since no outside hearing officers are utilized. The same concern was expressed regarding the resident appeal process.

The Commission has not explored the idea of having a juvenile advocate that is available even on a regional basis where a person can travel from facility to facility to address these kind of concerns on behalf of juveniles. The Board believes this may be something that is worth looking into.

On this set of standards as it relates to this topic, some members of the field have been working on an alternate draft that is going to be given to the Commission today. This is one of those sections that is a work in progress and the public comment period will probably provide even more input on it.

Mark Williams – Tom Green County

It was requested that in Mr. Williams' facility they be permitted to give a kid blankets instead of two sheets since the sheets might be used to hurt themselves or a detention officer. Mr. Williams is asking to not have to have a screening or assessment to make those modifications.

The Commission does not prohibit modifications if they're justified. This standard was taken from ACA and the Jail Commission who has an extremely dangerous population and their standards require the same as the Commissions does, allowing modifications with due cause.

If appropriate cover wasn't provided it could mutate into some kind of abuse or neglect. You won't be able to point to the DOJ's interpretation that says two sheets and no blankets. The Commission's existing standard has been in place since adoption in the early 80's and has been made more permissive to integrate pillows. The same thing could be said with pillow coverings or anything else in his or her cell.

A little language could be added to help address Mr. Williams' concern making it clear that it's not only if the kid is suicidal that you can make modifications, but also if the kid has a history of making weapons out of sheets or attacking staff with the sheets. It may not get to where the standard is totally changed but it could be given a little more flexibility. The Commission can work on extra language for that.

Isela Gutierrez – Texas Criminal Justice Coalition

Ms. Gutierrez is the Director of the Juvenile Justice Initiative of the Texas Criminal Justice Coalition. She testified in favor of the proposed rule from the perspective of an advocate for youth and for families. It's very important the Texas Juvenile Probation Commission has chosen to take these precautions around issues like the disciplinary systems, treatments and to have found a way to address these issues before law suits and scandals arise like the ones involving the Texas Youth Commission.

A **motion** was made by Commissioner Shults and **seconded** by Commissioner Shannon to approve Chapter 343 for initial publication in the Texas Register. Motion passed unanimously.

**8. Update on Allegations of Abuse, Neglect and Exploitation for Fiscal Year to Date – L. Jacobs**

From September 1<sup>st</sup> - October 31<sup>st</sup> the Commission has received 130 allegations of abuse and neglect along with 168 reports of serious incidents. At this time last year there were 107 allegations of abuse and neglect and 147 reports of serious incidents.

After the last board meeting staff looked to see if some of the high numbers of attempted suicides were statistically significant. Some of those high numbers of attempted suicides did not translate into high rates, meaning that the number of kids in detention, the rating of bed capacity, the number of detention days provided by that jurisdiction, all of those departments that look like they could be high rates from the number of incidents were not.

Right now the Commission's policy, practices and technical assistance to a department is "when in doubt, report the incident" even if the activity the child is participating in doesn't seem lethal. This is probably one of the reasons for the high numbers.

There has not been a suicide in four years. Before that, there was on average one suicide per year, up until 2001 and in 2002 it was averaging two per year. So that's a significant number. It's alarming to see the attempts but it's better to see active reporting and involvement in addressing the issue.

No action was required for this item.

#### **9. Update on Abuse, Neglect and Exploitation Call Line Pilot Project– L. Jacobs**

There were two small, two medium and two large counties that volunteered for this pilot project. Those counties are Van Zandt, Brown, Randall, Montgomery, Harris and Bexar. In April or May each one of these sites were visited by at least one of the Commission investigators.

Throughout the pilot period of March 1<sup>st</sup> – October 31<sup>st</sup> there were 21 investigations opened. 13 of those were grievances, 1 was a serious incident and 7 were "other" meaning someone already reported it. 14 of the 21 cases have been disposed of as "does not meet the definition of abuse". There are 7 pending. This information deals solely with the volunteer pilot sites.

Last year there were 793 allegations. Within those, 21 were received during the pilots; the average was 132 cases per investigator. The Commission's research unit projected a statewide call allegation volume would be 195. This would increase the total received to 988, an increased average case load by 33. There was some concern from the field that implementing the call line statewide would be an overwhelming burden for the Commission. 132 cases is a lot but it's not unmanageable.

##### Michael Martinez – Bexar County

Bexar County Juvenile Detention Center has been participating in the direct report pilot project since May 18, 2008. The Krier Center, a post-adjudication facility began participating in the project June 1, 2008. In approximately the 7 months time there's been about 40 direct report calls. Those calls included both grievances and allegations. Of the 40 calls nearly half of them were placed by 5 residents.

Operationally, the number of direct ANE calls has not been unmanageable, in fact, there's been little impact. It's similar to attorney phone calls, just a part of regular programming. Staffing has been stressed occasionally depending on the number of staff that are taken off line, but that's a necessity.

The option of direct reporting is a necessity, parents especially have a greater level of comfort knowing that their child can report directly, they see the signs and the posters in visitation and in the lobby, and that reflects the facility's commitment to keep this option available for residents.

On a side note, Bexar County's department has an investigations unit that is separate and apart from Mr. Martinez's division. The investigators do not work for him in any way, there's no direct line chain of command. The investigations unit reports directly to the departments' general counsel. There is a level of objectivity to their investigations.

Six core strategies promoted by the Hogg Foundation have been implemented and modified to reduce the use of restraint and seclusion and although it's intended for mental health settings, the strategies are applicable to detention and correctional treatments. When put into practice, it moved the staff members' approach to one that's more relationship based, more collaborative and less confrontational, and creates a situation where there's less likelihood of potential allegations.

There will always be false allegations against officers who've done no wrong and committed no offense and Mr. Martinez hopes there are adequate safeguards to those officers as well as the children.

No action was required for this item.

**10. Discussion and Possible Approval of New Chapter 350 Related to Commission Investigations of Abuse, Neglect, Exploitation, Death and Serious Incidents to be Republished in the Texas Register with Substantive Changes for Another 30-Day Public Comment Period – L. Jacobs**

Chapter 350 was posted for the first 30 days and no public comments have been received. Some minor changes have been made and at this time the Commission is requesting approval to republish this to the Texas Register for a second public comment period.

A **motion** was made by Commissioner Shannon and **seconded** by Commissioner Boyd to approve the new Chapter 350 to be republished in the Texas Register. Motion passed unanimously.

**11. Discussion and Possible Approval of New Chapter 358 Related to Identifying, Reporting and Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents to be Republished in the Texas Register with Substantive Changes for Another 30-Day Public Comment Period – L. Jacobs**

Chapter 358 was posted for the first 30 days and 15 public comments have been received. 8 modifications have been made, and based on those modifications this request is for approval to post for a second publication to the Texas Register for a second public comment period.

After the first public comment period some changes to the definition of “reportable injury” were made by adding the term “substantial injury”. The definition as written before would have required that the most minor of injuries resulting from a physical, mechanical or chemical restraint would be reported to the Commission, even red marks from mechanical restraints or a minor bruise.

The term “results from a personal, mechanical or chemical restraint and is a substantial injury” was added and then it defines substantial injury as “an injury that is significant in size, amount or severity.” So the Commission still wants to be aware of injuries that result from restraints, but the parameters were narrowed a little more so it wasn’t such a wide net that was cast.

Some of the other substantive changes were made as a result of PREA and the sexual abuse definitions on page 217. The term “sexual abuse also includes those actions that are intended to intimidate, hurt, humiliate or harass” was added so it doesn’t have to actually be to arouse or gratify someone’s sexual desire, but it can be done to intimidate also.

Previously the internal investigation should be initiated immediately, as soon as the allegation is made. However, initiating that internal investigation immediately could potentially jeopardize the law enforcement’s investigation, may not give the Commission adequate opportunity to come out and work with the facility at the same time, or it may even contaminate possible evidence in a criminal case.

That person now still has to be suspended or reassigned, but there is a clause that gives some leeway. If law enforcement requests, or they are directed by law enforcement to postpone their internal, or if the Commission requests it, or if just on their face they see if they go in and start an investigation it might contaminate some potential evidence, that is now built in.

A **motion** was made by Commissioner Ordoñez and **seconded** by Commissioner Shults to approve the new Chapter 358 to be republished in the Texas Register. Motion passed unanimously.

**12. Discussion and Possible Approval of New Chapter 344 Related to Employment, Certification and Training to be Republished in the Texas Register with Substantive Changes for Another 30-Day Public Comment Period – C. Weisinger**

The Commission is requesting to repost Chapter 344 for a second public comment period. As a result of the first public comment period 14 comments were received and 7 changes have been made.



A board member expressed continued concern with the length of time that qualifies a person for employment after felony probation is completed. This was brought up at the last meeting and not resolved.

Commission staff looked at the Occupations Code and after review and discussion decided that ultimately that person has paid their debt to society. What was done is that in Subchapter B in Chapter 343.400 a statement was added to emphasize to the departments to consider more than we have in our standards and to leave that decision up to them.

Most felonies for which people get probation in Texas are 10-year sentences. And so unless the court discharges them early, they could potentially be on probation for 10 years. Therefore they can get off probation and immediately go to work and obtain their certification without having to demonstrate they can keep from committing a crime or have some other serious problem once they're off of probation.

If there's a statutory reason in the Occupations Code to prevent there being some requirement of 3 years from the date the probation is terminated in felony cases or something like that, then so be it. This issue will be looked into again during the second public comment period.

A **motion** was made by Commissioner McClendon and **seconded** by Commissioner Ordoñez to approve the new Chapter 344 to be republished in the Texas Register. Motion passed unanimously.

*Note: Commissioners Boyd and Shannon were excused to leave at this time.*

**13. Overview of the Commission's Webinar Training Program – A. Welebob**

*Note: Item #13 was tabled until the next board meeting.*

**14. Review, Discussion and Possible Action Regarding Disciplinary Action in Docket No. DH07-15471-06138; Texas Juvenile Probation Commission v. Walter Jones, A Certified Officer (Proposal for Decision and Final Order) – N. Thomas / C. Cowan**

*Note: In each of the following disciplinary action cases, there was not an appearance by the officer. Also, all of the officers left their employment shortly after the incident in question. All Commissioners had a chance to review all of the findings of fact prior to the board meeting.*

The recommendation is revocation.

A **motion** was made by Commissioner Shults and **seconded** by Commissioner Ordoñez to approve the decision and final order related to Walter Jones. Motion passed unanimously.

**15. Review, Discussion and Possible Action Regarding Disciplinary Action in Docket No. DH07-18073-060160; Texas Juvenile Probation Commission v. Michael Kelly, A Certified Officer (Proposal for Decision and Final Order) – N. Thomas / C. Cowan**

The recommendation is revocation.

A **motion** was made by Commissioner Ordoñez and **seconded** by Commissioner Shults to approve the decision and final order related to Michael Kelly. Motion passed unanimously.

**16. Review, Discussion and Possible Action Regarding Disciplinary Action in Docket No. DH07-7152-060002; Texas Juvenile Probation Commission v. Derek Russaw, A Certified Officer (Proposal for Decision and Final Order) – N. Thomas / C. Cowan**

The recommendation is revocation.

A **motion** was made by Commissioner Shults and **seconded** by Commissioner Ordoñez to approve the decision and final order related to Derek Russaw. Motion passed unanimously.

17. **Review, Discussion and Possible Action Regarding Disciplinary Action in Docket No. DH07-12978-060072; Texas Juvenile Probation Commission v. John Rodriguez, A Certified Officer (Proposal for Decision and Final Order) – N. Thomas / C. Cowan**

The recommendation is a suspension of two years.

A **motion** was made by Commissioner McClendon and **seconded** by Commissioner Shults to approve the decision and final order related to John Rodriguez. Motion passed unanimously.

18. **Review, Discussion and Possible Action Regarding Disciplinary Action in Docket No. DH07-10720-060406; Texas Juvenile Probation Commission v. Jesus Natal, A Certified Officer (Proposal for Decision and Final Order) – N. Thomas / C. Cowan**

The recommendation is revocation.

A **motion** was made by Commissioner Shults and **seconded** by Commissioner Ordoñez to approve the decision and final order related to Jesus Natal. Motion passed unanimously.

19. **Review, Discussion and Possible Action Regarding Disciplinary Action in Docket No. DH07-18840-060404, DH07-18840-060289, DH07-18840-060290, and DH07-18840-060291; Texas Juvenile Probation Commission v. John Brady, A Certified Officer (Proposal for Decision and Final Order) – N. Thomas / C. Cowan**

The recommendation is revocation.

A **motion** was made by Commissioner McClendon and **seconded** by Commissioner Shults to approve the decision and final order related to John Brady. Motion passed unanimously.

20. **Review, Discussion and Possible Action Regarding Disciplinary Action in Docket No. DH07-18575-070196; Texas Juvenile Probation Commission v. Michael Alexander, A Certified Officer (Proposal for Decision and Final Order) – N. Thomas / C. Cowan**

The recommendation is revocation.

A **motion** was made by Commissioner Shults and **seconded** by Commissioner Ordoñez to approve the decision and final order related to Michael Alexander. Motion passed unanimously.

21. **Review, Discussion and Possible Action Regarding Disciplinary Action in Docket No. DH07-10555-060272; Texas Juvenile Probation Commission v. Bryan Douglas, A Certified Officer (Proposal for Decision and Final Order) – N. Thomas / C. Cowan**

The recommendation is a suspension for two years.

A **motion** was made by Commissioner McClendon and **seconded** by Commissioner Shults to approve the decision and final order related to Bryan Douglas. Motion passed unanimously.

22. **Executive Director's Report – V. Spriggs**

*Note: This item was taken out of order and presented after Item #3*

The response to the Sunset Commission's staff report is due December 26<sup>th</sup>. On December 15<sup>th</sup> and 16<sup>th</sup> the Sunset Commission will have a hearing with the Legislators that comprise the Sunset Committee. The Commission has been getting letters from all over the state. Some juvenile boards are doing resolutions in addition to the juvenile probation chiefs writing letters, and some regional associations are sending in correspondence. There will probably be letters coming in from judges and county commissioners as well.

Ms. Cherie Townsend who is the new Executive Director to the Texas Youth Commission (TYC) was introduced and said that her focus the last 6 weeks has been to ensure that the TYC is a fully functioning and credible part of the juvenile justice system.

Her first focus within TYC is to ensure the safety of the youth and staff within their facilities. Focus must also be on producing better outcomes of treatment programs, offering more specialized treatment, strengthening education and ensuring that there's a solid correctional program as well as support services such as medical care.

TYC is also working toward evaluating where their youth are coming from, what their specialized needs are and how TYC can begin to make a transition over the next five years to a more regionalized service delivery system.

And finally TYC hopes to strengthen their reentry focus and how youth return to their communities and how they continue to work with local probation departments as well as mental health, mental retardation and educational systems as kids return to the communities.

Ms. Spriggs and Ms. Townsend are working together on a response to the Sunset Report, especially on recommendation 1.1 which calls for the elimination of TJPC and TYC and the creation of the Juvenile Justice Department. Ms. Spriggs said Sunset's recommendation stems from what they call a lack of coordination between the two agencies but TJPC and TYC have always coordinated informally in the past. One cannot exist in a vacuum. TJPC cannot exist without communicating with TYC and vice versa.

Overall the goal of Sunset should be to decrease commitments to TYC. Since 1995 commitments to TYC have decreased significantly. In the minutes from the Commission's March 21, 1997 board meeting we proposed using some turn-back funds to award departments who commit less than their established number. Then you have the minutes from the November 21<sup>st</sup> 1997 board meeting where it actually details the allocation of \$324,770 to provide awards which departments received.

Over a number of years the coordinated strategic plan was done but in the last few years, there was so much going on at TYC that the Commission would produce it and there would be our coordinated plan.

More can be done. We can put a five-year plan in place that maps out the system in terms of predicting trends, populations, population shifts, needs of the populations that's coming into the system, and we can do that now that we have leadership at TYC that actually understands that and will commit to it.

Ms. Townsend's only been there less than 60 days, and already more has happened that addresses the reforms than has happened in the eighteen months preceding now. We think that this 1.1 recommendation is a drastic response to what was then a leadership issue with TYC but that has now been addressed.

***Recommendation 1.1 Abolish TYC and TJPC and transfer their functions to a newly created state agency, the Texas Juvenile Justice Department, with a Sunset date of 2015.***

This recommendation is really predicated on the reform not being complete. A major reform of juvenile justice systems or any particular agency takes a very long time. TYC is in the midst of that reform right now, it's a reform that was overwhelmingly supported in terms of Senate Bill 103 and it's important to allow that reform to be completed and to evaluate whether it has actually accomplished what was intended or not. There has not yet been that opportunity.

To shift the focus from that reform being completed to how agencies are organized is not cost effective nor does it really accomplish the kind of reform that was intended in terms of the juvenile justice system. Recommendation 1.1 does not strengthen the juvenile justice system in the State of Texas, system coordination will strengthen our juvenile justice system, but 1.1 is really not necessary for that to occur.

We are crafting a memorandum of understanding or some way to formalize how we could do a better job of exchanging information on an aggregate basis so we could do better planning, and how we could make

it easier for counties to transmit data at commitment by using the JCMS system. That's just one example in a very short period of time of how we can improve systems collaboration and can do that very effectively by two organizations working together with local jurisdictions.

TJPC and TYC have two very distinct mandates. The focus that TJPC is able to have on community based services and to be as flexible and mindful to the whole issue of local control will start to be lost as you move to a consolidated system and certainly the end result will be a lot more of the responsibility, fiscal and otherwise, will be placed on the counties.

The state will have to protect the grayest area of exposure and liability which would be the operations of institutions. And so you'd see the money that is currently at the front end be more and more absorbed into the back end to cover those areas of exposure and liability the state would have inherited under one system. I have not seen yet where you take two separate agencies with two very distinct mandates, put them into one agency and not explode a bureaucracy to cover those functions.

There is no value to the state in combining the agencies, because after you finish expanding the administrative aspect of these two distinct agencies to make sure you maintain constant oversight of the two separate entities, you've ended up spending potentially more money than what alleged savings are going to be which is \$594,000 and some change. The reality is Ms. Townsend just eliminated 23 positions at TYC that weren't even included in the report that saves the state \$1.3 million.

***Recommendation 1.2 Establish an 11-member Board to govern the Texas Juvenile Justice Department.***

Again, since it's premised on the passing of 1.1 we obviously disagree with 1.2 as well. We think our current structure meets the needs of the State as a stand-alone agency and the board that we have.

***Recommendation 1.3 Establish a community corrections pilot program that encourages counties to keep the lower-risk offenders eligible for commitment to TYC in their home communities and out of state confinement.***

Again, we used to do that, and now they're talking about going to a possible pilot that would take unspent funds from TYC's budget to target those on reducing commitments in a given area. And we'd work together, select a pilot county, put the grant out on possible potential candidates, release an RFP based on TYC's unexpended funds and allow for the creation of this program.

Well. There are a few issues there. The prediction is that TYC is not going to have any unexpended funds this year. This past fiscal year TYC had transitory leadership, so there was no cohesive movement and they had excess funds. And the reality is there are capacity issues with the counties.

First, how much money can you put out there to maintain and sustain capacity if the rate is going to fluctuate year to year? Let's use East Texas as an example, and you use the pilot to decrease commitments in East Texas by 100. But let's say in Central and South and West Texas there's some really high juvenile crime activity at a felony level that leads to 150 more kids being committed. If the money's coming from an unexpended balance, they're short changed because the kids are still coming, but they're coming from other parts of the state.

So there's a lot of work that needs to be done. We don't disagree that we need to look at some incentives and other ways to encourage counties to maybe work with more kids and defer kids more, but that's going to take more discussion and this is not necessarily the answer. It's an option that we can explore, but there are other options that need to be discussed and explored.

There have been a lot of changes to the juvenile justice system in terms of what's expected of local counties. And counties have not completed those adjustments yet in terms of expanded capacity to work with not just misdemeanor offenders, but youth that are chronically delinquent and have very specialized needs, and so there are still a lot of adjustments being made at the local level.

This particular recommendation was based on an assumption that because there are general offenders coming to the Texas Youth Commission that those youth can easily be served at the local level. When you look at TYC's new commitments, over 60% of them have specialized treatment needs and have often exhausted the resources of local communities.

Let's look at the data, let's look at the different treatment models, and let's see how we could work together in developing a proposal that would support local jurisdictions to maybe do more of this if they chose to. It really is a local choice too, in terms of having more effectively worked with these young people. It may be that they are more effectively served at the Texas Youth Commission or locally.

And we have to also make the adjustment as we shift to a more regional focus, how these things support one another and really develop a more systemic approach. TYC is open to looking at how we could support pilot efforts, and working with TJPC and either with local counties specifically or a regionally. But that needs to be done thoughtfully based on our experience and on the data.

Then certainly at some point it may be able to occur by funds that are no longer necessary at the Youth Commission if commitments continue to decrease, but the best way to initiate that discussion is to start by talking about how we make an additional investment in this kind of approach if we chose to do that. So we're looking at new money being invested in these youth and their families.

***Recommendation 1.4 The Sunset Commission should recommend that the Legislature designate appropriate funding to establish the community corrections pilot program.***

Again, we're recommending it has to be new funding just to reiterate because one just kind of blends into the other. And, also knowing that it has to be new money, we cannot start moving the TJPC's or TYC's current funding around, because if it's TJPC's the funds are already appropriated to departments, departments already have uses that they're putting those funds to, so we're looking at new money to create new pilots.

***Recommendation 1.5 Consolidate existing community correction funding to the State's appropriation process.***

So we agree with this one, we believe that there should be a mandate for TJPC as a stand-alone agency, and again, we start every response with a notation that we are against recommendation 1.1. This is the restructuring of our budget. Back in March we already recommended this and this basically supports our recommendation in our LAR.

***Recommendation 1.6 Require the department to consider past performance in awarding future community corrections grants or pilot program grants.***

This is something that we talked to Sunset about that we've already been doing. Sunset staff spoke to the Commission's Research Unit and one of the things we're looking at is on each level of progressive sanctions looking at what defines an acceptable level of success or failure, depending on if you look at the glass as half full or half empty. On each level of progressive sanctions it's going to be different because you're dealing with a more severe youth as you go deeper into the system.

So we're already looking at that internally. Once we have those numbers set we'll be sharing those with departments and then we'll be using that as the performance measure with departments and their funding so that you actually get that level of performance.

What we're not talking about doing is cutting somebody's funding if they're not performing. The first response would be we would provide technical assistance. After that point, they would be told that if performance hasn't improved then we'd look at using state funds for something different but not allowing state funds to be used for that purpose.

If you start cutting departments they will have fewer resources. When they have less resources they end up committing more kids. So the goal is not to cut departments, it's to help them develop programs that will be more effective but to establish at each level of progressive sanctions what that success level is.

Overall, we've been looking at aggregate performance data, and on the aggregate departments have performed quite well, again, constantly reducing the numbers to TYC and always exceeding the expectations that we set. So we're already moving in this direction.

***Recommendation 1.7 Require the Department to establish basic probation and community corrections funding formulas in rule.***

We are against this recommendation. The appropriation of the legislative session finishes in May. We would have to have a board meeting in early June when we'd know how much money we're actually receiving to establish what we're proposing, then have it posted, and then hope there's no substantial disagreement, and then come back and set the budget.

By the time we got through the process, we wouldn't even be able to have the budget ready to go to departments until November or December. And the more controversial the budget was, the longer it might take to actually get the funds out to probation departments.

Right now, what we do is sit down with departments whenever something comes up. In the last round we've seen \$58 million new dollars and we sat with the President's Council to talk about how to disperse these funds as they come out and it was the first time we developed a regional funding formula with input from the President's Council and direction and guidance from them.

So there already is a mechanism that allows probation departments to have input into the structure of the funding and as always, the ability to come here and discuss it, whether it's the President's Council, Advisory Board, public testimony, there are a lot of avenues for that to occur. To put it in rule only really serves to make it more difficult for them to operate because our funds wouldn't be coming out in time for our September 1<sup>st</sup> fiscal year, they'd be coming out after the fiscal year started.

***Recommendation 1.8 Require the Department to give juvenile courts access to information on youths' progress at TYC.***

The Texas Youth Commission as an agency supports this recommendation. We have already just this month initiated a report that's going out to families and feel that it's a similar kind of information that should be provided to local jurisdictions and certainly to provide the re-entry plan 90 days prior to release. It makes a lot of sense. I'm not sure how many of the local jurisdictions really want all of that information, but we certainly think that sharing that information is very appropriate and hope that we're going to be able to develop stronger lines of communication and information exchange with local jurisdictions.

***Recommendation 1.9 Require the Department to adopt a memorandum of understanding (MOU) with TCOOMMI for continuity of care for juvenile offenders with mental impairments.***

We've already developed that MOU and we informed the Sunset staff of that, so they know that, it's in the works, we have to go through the legislative process since there's a requirement that allows us to not be in violation of the HIPPA requirement by having state law that allows for this information sharing which is why we'd have to have a legislative sponsor. Representative Turner has agreed to sponsor the bill and we'll find a second sponsor of the bill and off it will go.

This MOU with TCOOMMI, DFPS, the Department of Public Safety (DPS), Texas Education Agency (TEA), DSHS and TYC allows for probation departments to receive information on any offender who comes in to find out if they have had contact with the mental health system. Right now we don't always know that. Potentially you can have access to those records to be able to provide at least a continuity of service in that regard.

This also fails to acknowledge all the other efforts that were collaborated and the nature of what the Commission is already doing with TYC, TCOOMMI, the Special Needs Diversionary Project (SNDP), the work with the MacArthur Foundation, the efforts that we have to create a residential mental health facility for juvenile probationers with moderate mental illness, there's a lot of things that we do in this regard.

It's not as though we underutilize mental health services. The reality is there are not a lot of mental health services out there, in fact they just had the Casey Foundation Children's Defense Fund informational forum in Houston yesterday where they were looking at an agenda for children in Texas and one of the things that they acknowledge is the state needs to provide incentives to get more people to go to school to become mental health practitioners focusing on juveniles and young people in general.

Probation departments have worked diligently to create a communications mechanism, to develop and utilize resources in their local communities for mental health services for these young people. They're not there. In some areas they're there more than others, but overall, this agency has been aggressively pursuing various avenues to get those resources developed and to create those mechanisms.

The bigger issue really is there's a need for some statutory change to insure that we can exchange the information both for the mental health/mental retardation services, delivery to probation departments with schools but then to the Texas Youth Commission and back to the community so that we have a complete feedback loop.

You certainly are all aware that there's a great need to increase the capacity of services, mental health services and services for co-occurring disorders for youth who are escalating into the juvenile justice system at all levels. It's that place where we want to really work together and to emphasize in our response to the Sunset, that we are working collaboratively, we want support to continue to expand the services that are available to young people and their families when they have these problems. Allowing us to exchange information will be helpful, but further assessment will also be very helpful.

***Recommendation 1.10*** *Require the agency to develop a comprehensive five-year Juvenile Justice Improvement Plan, with annual implementation updates, to better integrate state and county juvenile justice functions and to address other critical state level reforms.*

Again, we are against the recommendation to eliminate the two agencies, we strongly feel that although it is two separate agencies, we can do this. In fact, if you look on page 16 of the draft, it tells you where we can start working on this five-year plan.

We can develop comprehensive treatment plan initiatives for offenders with special needs across the systems, that information follows as well, and the approach follows. Data sharing across the continuum of the juvenile justice system is JCMS which we've spoken at length about over the last few meetings. We can develop systemic performance measures and desired outcomes and the use of appropriate and validated risks and needs assessments.

The Sunset report spends some time talking about assessments. And they talk about each one of us is developing an assessment instrument in a vacuum. The reality is we're developing three.

The first one that's going to be rolled out in January which will be made available to all probation departments at no cost it's being developed at the Commission. When it's developed, it'll be validated on the juvenile justice population of Texas, those juveniles who've passed through the doors of juvenile probation departments and the juvenile courts. That instrument is very specifically designed for youth at the point of contact with probation and so there was no need to involve TYC in that process.

The second instrument that we're going to develop after we have the first one rolled out will be the phase of the movement of the kid within the juvenile probation system. That still does not involve TYC.

The third phase which will start probably in a year and a half will actually involve the movement of a juvenile as they transition from a facility back into the community. At that point, the Commission can

certainly work with TYC although at that point, they already have their instruments in place because they need something now. And they have contracted with a vendor that probation departments are using now.

The Commission will be able to use that information because with JCMS assuming we receive the funding for that this legislative session, the results of these instruments and assessment tools will be in the system, so no matter where the juvenile goes that information will follow that child into another department, within the department they're in, or if the juvenile ends up in TYC they'll still have access to that information.

In the reverse, juveniles coming out of TYC, and because TYC is part of JCMS, they'll be able to push a button and send the assessment information, that transitions the youth back into the communities on their parole status, they'll still be able to share that with the probation departments as part of the ongoing information that they'll be sending out to the juvenile court. So the assessment piece will look like we're working in silos, we're actually working to address very specific communities and so it wasn't a failure of the system, it was the focus and the point of contact in the system that these assessment instruments were addressing.

And then the critical issue for both segments is workforce leadership and development of succession planning in all levels of the system, whether it is a community based local probation department or whether it's TJPC, or TYC as well whether it's with their regionalized facilities, or in their central office, the issue of succession planning is huge for everybody these days. So that's certainly an issue we can work on as part of that 5-year plan.

Then of course the last point of cooperation to be included in the 5-year plan is incorporating national best practices into the Texas system. But as we talk about national best practices, I don't want to forsake or ignore if you will, best practices in general because we have some programs that are very successful in specific jurisdictions because of the populations they work with.

They might not work in New York, so it may not be a national best practice, they may not work outside of that particular county in Texas. Does the program work? Is there reduced recidivism? If so, then we're not going to be looking to make any changes there because that's not our role. Our role is to work with the counties to insure successful services when these juveniles come in contact with probation departments.

We're certainly looking at national best practices and bringing them into Texas and bringing them into this system. One of the things we talked about with the national best practices have not been just focused on program models or services but more at the policy level, where there are some policies that are being enacted in other parts of our country that people feel really are best practices for juvenile justice overall, no matter what the regional focus may be and I think those are the things we want to engage in some dialogue and discussion about and where those make sense for Texas and where they don't.

**Issue 2** is about the office of the TYC ombudsman so we'll skip that one.

**Issue 3** *A small number of non-secure residential facilities, used exclusively by counties for placing youth on probation are not licensed or monitored by any state agency.*

There are a small number of non-secure residential facilities used exclusively by the counties. Right now statutory language really requires DFPS to license those facilities. The DFPS hasn't, they've licensed some, but it's a very difficult process because in many areas they say it's not their responsibility because it's a function of the juvenile probation department.

Well, there's no clear statutory ability for us to license those facilities, we brought this issue to Sunset, we pressed at the ability to be able to require the certification of those facilities, and the training of folks, and everything put here is what we asked for essentially as the Juvenile Probation Commission. And **Recommendation 3.1** is an extension of that.

**Recommendation 3.2** *Require the new department to establish certification standards for employees who work in non-secure correctional facilities that accept only youth on probation.*



This is right in line with what the Commission currently does as an independent, stand-alone state agency when we certify juvenile probation and detention officers.

***Recommendation 3.3*** *Require a local juvenile board to annually inspect any non-secure correctional facility in its jurisdiction used only for youth on probation, and certify the facility's suitability with the Texas Juvenile Justice Department.*

Again, it's right in line with the current protocol.

***Issue 4*** *Elements of TJPC's Officer Certification Program do not conform to commonly applied licensing practices.*

In fact, the Commission doesn't license, we certify and currently through our rules, we require probation officers to receive basic training for JDO's, JPO's and soon to be JSO's and then every two years they receive an additional 80 hours to be certified. There is no problem with that. Basically it's just formalizing what the Commission already does.

***Recommendation 4.3*** *Transfer disciplinary hearings for certified officers to the State Office of Administrative Hearings.*

We have a very strong issue with that change. Sunset notes their beliefs will cost approximately \$5200 per year to conduct the 13 hearings that we propose. The Commission discussed this with Cherie Townsend about locating a disciplinary officer at TYC so that there is no cost and the conflict is eliminated. So again, here's another area of just by having a discussion we're able to address some of the issues.

***Recommendation 4.4*** *Authorize the Department to place certified officers on probation.*

TJPC currently utilizes the probationary status option as a component of disciplinary procedures via internal procedure but agrees with the recommendation to put this authority in statute. It doesn't change the practice it just puts it in statute as opposed to creating something new.

***Recommendation 4.5*** *Authorize the Department to temporarily suspend an officer's certification under certain circumstances.*

The Commission cannot fire an employee, because they are county employees but what we can do is revoke and suspend certification and so we do that but the ability to fire is at the county level.

***Recommendation 4.6*** *Clarify certified officers' right to appeal Department actions to district court under the substantial evidence standard.*

The Commission agrees with that recommendation and believes this should be a mandate for TJPC as an independent, stand-alone state agency.

#### **- Introduction of New Staff**

Charlotte Caples was introduced as a new Training and Curriculum Development Specialist in the Behavioral Health Unit, Eric Gonzalez was recently hired in the MIS Unit as a Network Specialist and Kati Branch joined the Fiscal Division as a new Accountant.

#### **- Agency Activity Update**

As of today a total of 616 bills have been filed and the Commission is currently tracking 116.

The Temple-Inland Foundation denied the Commission's request for \$2.6 million to fund the Peavey Switch Facility, the mental health facility in Lufkin, Texas. A grant has since been sent out to the Jet Foundation based in New York asking for approximately \$936,000 for start up funds for this program.

There is also a grant in to the Hogg Foundation which will allow for an in depth study of the Special Needs Diversionary Program (SNDP) Project to determine how successful these youth are in the long run. This is a specialized mental health caseload effort that involves 19 projects currently and partners the Commission with the Texas Council on Offenders with Medical and Mental Impairments (TCOOMMI) and the Mental Health System.

No action was required for this item.

**23. Public Comments**

No other public comments were taken and no action was required for this item.

**24. Adjourn**

A **motion** was made by Commissioner Shults and **seconded** by Commissioner Ordoñez to adjourn. Motion passed unanimously. The meeting adjourned at 1:20 p.m. The next board meeting will be held on Friday, January 30, 2009.